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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE, PETITIONER,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, J. T. Trotter, Guardian of Joseph A. Leake, a non compos mentis, and which Guardian was the appellee in the above entitled cause in the Supreme Court of Tennessee, respectfully shows to Your Honors:

I.

Summary Statement of the Matter Involved.

This is a suit in equity brought in the Chancery Court at Maryville, Tennessee, by the State of Tennessee in its own behalf and for the use and benefit of Blount County, a subdivision of the State of Tennessee, seeking to collect unpaid and delinquent taxes which had been assessed for the year 1929 on numerous pieces of real estate located in said County. Among the pieces of real estate on which it was sought by the Bill to collect taxes, was the five-acre tract of land here involved, which was assessed at Three Thousand ($3,000) Dollars.

The case was tried in the Chancery Court upon a Stipulation of Facts, which shows that one Joseph A. Leake, a veteran of the World War, was rendered non compos mentis as a result of his services in said War (Record p. 7). Because of said disability, a Guardian was appointed for said non compos and this Guardian has been receiving for many years, from the Veterans Bureau of the United States Government, One Hundred ($100) Dollars per month as compensation under the provisions of the World War Veterans' Act of 1924 (Act of June 7, 1924, c. 320, Sec. 1, 43 Stat. at L. 607, U. S. C. Title 30, Sec. 450), and Acts amendatory thereof. The Guardian has also been receiving for the benefit of his ward, Fifty Seven and 50/100 ($57.50) Dollars per month from the Veterans Bureau as disability benefits, under a war risk insurance policy issued on the life of said veteran and paid under the World War Veterans' Act of 1924 (Act of

June 7, 1924, c. 320, Sec. 300, 43 Stat. at L. 624, U. S. C. Title 38, Secs. 511-512) (Record p. 7).

Under a proper order of the Chancery Court, the Guardian of Joseph A. Leake, in 1924, purchased, as a home for his ward, the five-acre tract of land, the taxes on which are here involved, at the price of Six Thousand ($6,000) Dollars and said Court authorized the payment therefor out of the funds received by the Guardian from the United States Government. The Guardian paid Four Thousand Five Hundred ($4,500) Dollars on the purchase price, out of the funds of his ward which had been received from the United States Government. For the remainder of the consideration he assumed a mortgage of Fifteen Hundred ($1,500) Dollars. Later certain buildings on this property were destroyed by fire and the Guardian collected Three Thousand ($3,000) Dollars in fire insurance (Record p. 8). The premium on the fire insurance policy had been paid by the Guardian out of the funds of his ward received from the Government (Record p. 8).

Out of the Three Thousand ($3,000.00) Dollars fire insurance collected by the Guardian, the Fifteen Hundred ($1,500.00) Dollars mortgage was paid off. However, this mortgage was not paid off until March 26, 1929 (Record p. 8).

Under the Statutes of Tennessee taxes for each year became a lien upon the property as of the 10th of January.

Shannon's 1917 Code, of Tennessee, Sec. 757.

The property was under the control of the Guardian during the year 1929 (Record p. 8).

The Guardian insisted that by virtue of Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C., Title 38, Sec. 454), this property was exempt from taxation (Record p. 6).

The Chancellor sustained the position of the Guardian and decreed that the State and County could not subject this property to any taxes (Record p. 12).

An appeal from said decree was taken by the State and County to the Supreme Court of Tennessee. The sole question involved upon this appeal was the right and power of the State and County to tax this particular property regardless of the provisions of said Act of Congress (Record p. 13).

The Supreme Court of Tennessee in an Opinion handed down on February 14, 1933, reversed the Trial Court and held that the property was subject to taxation (Record pp, 13-16; 57 S. W. (2d) 455). The decree based upon said Opinion was entered by the Court on February 21, 1933 (Record p. 17).

This petitioner being of the opinion that the final decree was entered on February 14, 1933, made application for and obtained from this Court, an order extending the time for the filing of this petition to May 18, 1933. However, petitioner learns that the decree was entered by the Court on February 21, 1933, and, therefore, said order was unnecessary.

II.

Reasons Relied on for Allowance of the Writ.

The Federal question of substance not heretofore determined by this Court, as to the right and power of

a State, or a political subdivision of a State, to tax property of a non compos World War Veteran which property was purchased with compensation and disability payments made under the War Risk Insurance Act and the World War Veterans' Act of 1924, was decided by the Supreme Court of Tennessee in the present case. Said Court held that such property can be taxed by the State and its subdivisions regardless of Section 22 of the said World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C. Title 38, Section 454). Upon said question the highest court of the State of Georgia has reached a different conclusion from the Supreme Court of the State of Tennessee, the Supreme Court of Georgia having held that property thus acquired is exempt from taxation.

Rucker v. *Merck,* 172 Ga. 793; 159 S. E. 501.
City of Atlanta v. *Stokes,* — Ga. —; 165 S. E., 270 (1932).

The question involved is one of considerable importance because there are many pieces of real estate owned by disabled veterans of the World War or by their guardians which property was purchased with funds received under the World War Veterans' Act and the right to tax all such property depends upon the ultimate decision of this Court.

It is important that this question be definitely and finally determined and this can only be done by a construction by this Court of that part of the World War Veterans' Act of 1924 wherein it is said "the compensation, insurance and maintenance and support allowance payable under Parts II, III and IV, respectively,

shall not be assignable; shall not be subject to the claims of creditors * * * and shall be exempt from all taxation".

III.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of Tennessee, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court had in the said case therein entitled State of Tennessee *ex Rel.*, Appellant, *v.* Arthur Blair *et al.*, Appellees, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States; that the judgment herein of the said Supreme Court of Tennessee be reversed by this Court. Petitioner prays for such further relief as this Court may deem proper.

Dated May 13, 1933.

J. T. TROTTER,
Guardian of Joseph A. Leake,
By R. R. KRAMER,
Counsel for Petitioner.

D. SYLVAN KRAMER,
JOHN W. MORTON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
PETITIONER,

vs,

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinions of the Courts Below.

The Opinion of the Chancellor, who tried the case, appears on page 12 of the Record. This Opinion is not reported.

The Opinion of the Supreme Court of Tennessee appears on pages 13-16 of the Record. This Opinion is published in 57 S. W. (2d) 455; 165 Tenn. —.

II.

Jurisdiction.

1. The date of the judgment to be reviewed is February 21, 1933 (Record p. 17).

2. The statutory provision, which it is believed sustains the jurisdiction of this Court, is U. S. C. Title 28, Sec. 344, there being set up in the pleadings and passed upon by the Supreme Court of Tennessee certain rights, privileges and immunities claimed under Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C. Title 38, Sec. 454).

3. The Supreme Court of Tennessee in this case held that property purchased by a veteran or the guardian of a non compos veteran of the World War, with funds received under the provisions of the World War Veterans Act, is taxable by the State and its subdivisions regardless of the exemption provided for in Section 22 of said Act. This decision is in conflict with the decisions of courts of last resort of other States.

Rucker v. *Merck*, 172 Ga., 793; 159 S. E., 501.
City of Atlanta v. *Stokes*, — Ga., —; 165 S. E., 270 (1932).

III.

Statement of the Case.

The facts are succinctly stated in the Petition for Writ of Certiorari and will not be here repeated. What is therein said is adopted and made a part of this brief.

IV.

Assignment of Errors.

Petitioner insists that the Supreme Court of Tennessee erred:

FIRST. The Supreme Court of Tennessee erred in holding that the property in question was not exempt from taxation.

This property was exempt from taxation under the express provisions of the World War Veterans' Act, which is referred to above.

V.

ARGUMENT.

(1) The Act of Congress.

Petitioner insists that by virtue of the express provisions of Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320; U. S. C. Title 38, Sec. 454) the property here involved is exempt from taxation. This Section of this Statute reads as follows:

> "The compensation, insurance and maintenance and support allowance payable under parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under parts II, III, or IV; and shall be exempt from all taxation."

(2) The property here involved is compensation and insurance and was paid under Parts II and III of said Act.

The right and power to tax this property for the period involved in this record—that is, for the year 1929, must be determined according to the status of the property on January 10th of that year by Section 757 of Shannon's 1917 Code of Tennessee. (Acts of 1907, Chapt. 602, Sec. 31). Every dollar that had been invested in this property at that time by the Guardian, was derived from the money received by the Guardian for his ward from the United States Government, part of the same having been received as compensation and part thereof as disability benefits under a war risk insurance policy on the life of said veteran (Record p. 8).

Under these circumstances we most earnestly insist that the property is non-taxable.

In the case of *Rucker* v. *Merck,* 172 Ga. 793; 159 S. E. 501 (1931), the Supreme Court of Georgia speaks as follows:

> "The sole question in this case, as made by the petition for injunction to restrain the tax collector of Banks county from selling property of Merck, the petitioner, is whether Merck's land, which he alleges to have been purchased with money which he alleges to have been derived exclusively from pension payments made for military service to the United States government, is subject to levy for taxes. It appears to us that the enactment of the above federal statute is decisive of the question. So far as the evidence in the case goes, the judgment of the trial judge

was amply sustained by the testimony, not only of the veteran (Merck) himself, but of the former owner of the land from whom Merck purchased the property, and there is no contradiction that the entire purchase price was paid at the time the deed was made. That the fund was derived from the federal government in payment for military services is undenied. The mere fact that subsequently Merck borrowed money from Moss and Chandler, and gave a deed upon his land as security for his subsequent indebtedness, does not in any wise affect the undisputed fact that the land was originally purchased several months previously with funds paid him by the federal government in compensation for his services and wounds received in the World War. Under the federal statute this land is exempt from 'all taxation.' This regulation does not in any way affect the liability for taxes of any other property of which the defendant in error may be the owner. The federal law protects any property which is purchased with the proceeds of pension, war risk insurance, and other forms of compensation provided by the government. The exemption from taxation, of course, adds value to the governmental benefaction, and increases the net income derived from the investment of the fund given by the government to the soldier. In these days when taxes are extremely high (in some instances amounting to a greater per cent than the income from some government bonds) it is easily to be seen that the compensation is appreciated by the federal exemption from taxation. Furthermore, this act tends to encourage veterans of the World War to procure homes to shelter their heads in old age, instead of making speedy and foolish ex-

> penditures of the allotments which have been made them by the general government."

In the later case of *City of Atlanta* v. *Stokes*, — Ga., —; 165 S. E., 270 (1932), this question again came before the Supreme Court of Georgia and the same principle was reaffirmed.

See to the same effect *Payne* v. *Jordan*, 36 Ga. Apps., 787; 138 S. E. 260.

The case of *Wilson* v. *Sawyer*, 177 Ark., 492; 6 S. W., (2d) 825, is very much in point. In that case the guardian of a disabled soldier had received certain funds from the Government because of the disability suffered and had turned these funds over to the Clerk of the Court to be held for the ward. Part of the funds were deposited in a bank and the remainder was invested in notes. An attempt was made to garnishee the Clerk of the Court and the Bank for a debt owing by the veteran. The Court held:

> "Upon hearing this testimony the court quashed the garnishment, and in so doing declared the law as follows:
>
> "'The court will dissolve this attachment. I do not think these funds can be attached until they come into the hands of Tom Sawyer, and they have never been in his hands. They are money derived from the federal laws, those funds cannot be garnisheed until they come into the hands of the party entitled to receive under the law. These funds were paid by the United States Government to Mr. Wilson, as guardian. He has been discharged, and the funds have been paid over to the clerk of the

probate court, and the funds are now in the hands of the register of the court, with instructions to turn them over to Tom Sawyer, and, until they come into the hands of Tom Sawyer, they cannot be attached. The petition to quash the garnishment and release the funds will be sustained.'

"The court was correct in the declaration of law made, except that the funds were not subject to seizure, even after they had come into the hands of the ward."

* * * "We think the manifest purpose of the legislation making provision for World War veterans was to devote the benefactions there provided to the sole use of the beneficiaries, and that the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit."

In the case of *Yates County Bank* v. *Carpenter*, 119 N. Y., 550; 23 N. E., 1108; 7 L. R. A., 557, the New York Court of Appeals in passing upon a State statute similar to the provision of the Act of Congress here involved uses this language:

"If the soldier is not protected in the act of exchanging his pension for the necessaries of life, its only effect would be to enable his creditors to take it in satisfaction of their claims. No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted. The

plain purpose of the Act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors, and to insure him and his family a safe, although modest, maintenance so long as their needs require it. * * *

* * * * * * *

"The rule seems to be just and reasonable and within the spirit of the exemption. In the case of the exemption of money, or its equivalent, there has been some controversy in the courts with reference to the extent to which the exemption shall be carried. In such case it is somewhat difficult to lay down a rule in precise terms by which it may be determined in all cases what property is liable and what exempt from levy and seizure upon legal process for the payment of debts, but we entertain no doubt that where the receipts from a pension can be directly traced to the purchase of property, necessary or convenient for the support and maintenance of the pensioner and his family, such property is exempt under the provisions of this Statute.

"Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the Statute; but where they have been embarked in trade, commerce or speculation, and become mingled with other funds so as to be incapable of identification or separation, we do not doubt but that the pensioner loses the benefit of the statu-

tory exemption. These propositions, we think, are fully supported by the cases in this and other States."

We believe that the interpretation made of this provision in the World War Veterans Act in the cases just cited, is the only fair and reasonable construction that can be made thereof. To say that it was the intent of Congress to exempt these funds only while they were still payable is to deprive this section of any practical vitality and to leave it meaningless. It has been held repeatedly that even the insurance, for which the veteran paid a premium, is in the nature of a bounty.

Cassarolla, v. *U. S.*, 271 Federal, 486.
In re Starums Estate, 218 N. Y. S., 394.

This being true the veteran has no vested right in the funds until they are received by him. Having no vested right therein, they could not be subject to the claims of the veteran's creditors prior to the veteran's receipt of same. Unless the funds are exempt from the claims of creditors after they are actually received by the beneficiary, the words of the Statute "shall not be subject to the claims of creditors of any person to whom award is made," are meaningless. Also the words "shall be exempt from all taxation," are meaningless. Of course, these funds could not be subject to taxation in the hands of the Government, because so long as they remain with the Government the beneficiary has no vested right therein. Hence they could not be subject to taxation.

We insist, therefore, that the intent of Congress was to exempt these funds from taxation after they were in the hands of the beneficiary; and to give this exemption any practical effect it must be interpreted to include not only the funds themselves, but whatever is purchased with the funds, so long as the funds have not been so commingled with other funds as to make them incapable of identification.

Congress has recognized that veterans of our wars who have become disabled in mind or body as a result of such service, are wards of the Government. It is for this reason that the Congress has provided that such ex-service men shall receive a modest sum to care for themselves and their dependents. Congress, also realizing the truth of the statement made by Chief Justice Marshall that "the power to tax includes the power to destroy," has provided that the benefits bestowed upon these wards shall be exempt from all taxation. The very object of this provision is to prevent the States and their subdivisions from taking away from the wards by taxation, the benefits which Congress has bestowed upon them. As heretofore pointed out, the intent of Congress in protecting these disabled veterans will be defeated if this Legislation is so construed as to give the States the power to tax, and creditors the right to levy, upon these compensation and insurance benefits as soon as they reach the hands of the veteran or his dependents.

(3) **The veteran being a non compos and his property being handled by a guardian, such veteran has not actually received these compensation and insurance benefits, but they are in fact still "payable" to him.**

While we insist that the word "payable" as used in Section 454 of Title 38 U. S. C. does not have the same meaning as the words "due or to become due" as used in Section 54 of Title 38 U. S. C. (R. S. Sec. 4747), yet even if it should be so construed, it could not change the situation in cases like the present where the funds or property have not actually reached the hands of the veteran, but will be handled and controlled by a guardian. This property and any other funds of the ward, which are in the hands of the guardian, are due the veteran and if the veteran's mind should become restored, they must, of course, be accounted for to such veteran by the Guardian. We believe that it was, and is, the intention of the Congress to have these funds transmitted to the beneficiary absolutely unimpaired and that, therefore, at least until the funds reach the beneficiary in a manner in which he can handle and control them himself, they are exempt from all taxation. The fact that title to such funds is vested in the ward upon the payment thereof to the Guardian (*Spicer* v. *Smith*, decided by this Court on March 13, 1933, 77 L. Ed., 599), does not affect the question here discussed. It is not a matter of title, but the question is whether the funds have actually reached the veteran, himself. Undoubtedly in the case at bar, they have not reached the veteran and, therefore, are still due and payable to him—not by the Government, but by the Guardian.

We believe that it has been universally held that funds received by a guardian from the Federal Government under the Act here in question and under other similar Acts of Congress, are exempt from execution and garnishment while in the hands of such guardian.

See

Tama County v. *Kepler,* 187 Ia. 34; 173 N. W. 912.

Payne v. *Jordan,* 36 Ga. App. 787; 138 S. W. 262.

In re Murphy's Committee, 236 N. Y. S. 343; 134 Misc. Rep. 683.

The Statute contains the same provision with reference to exemption from taxation that it does with reference to exemption from attachment and execution and if the funds are exempt from execution while in the hands of the Guardian, we can see no reason why the property or funds should not be exempt from taxation while they are in the hands of, and being handled and controlled by the Guardian.

This Guardian was appointed under the Statutes of the State of Tennessee. He cannot hold the money he receives from the Government as such. It is a statutory duty to invest this money in some income producing property or security.

Shannon's Tennesse Code of 1917, Sec. 4280.

We can see no reason for holding that if the Guardian kept his ward's funds in moeny, such funds would be exempt from taxation, but that if he invested

this same money in notes or bonds, such notes or bonds should be taxed. It is the same compensation or disability insurance and can be traced and identified. If notes and bonds are exempt, we can see no logical reason for not exempting real estate purchased with the benefits received under this Veterans' Act.

(4) The fact that fifteen hundred ($1,500.00) dollars was paid on this property in March, 1929, out of the proceeds received from a fire insurance policy does not affect the questions here involved.

We have heretofore shown that the taxes involved in this proceeding are for the year 1929 and they are assessed and become a lien on the property as it existed on January 10th of that year. Any later change in the nature of the property or its condition, does not affect the property for that year. The money from the fire insurance policy was not paid on this property until March 26, 1929 (Record p. 8). In other words, the entire consideration paid for said property as it stood at the time these taxes became a lien, was paid out of funds received by the Guardian from the Federal Government under the World War Veterans' Act. There was a deed of trust against the property for Fifteen Hundred ($1,500) Dollars. This was assumed by the Guardian and was to be paid at maturity out of funds received by the Guardian from the Government. The record discloses that the entire estate of this ward consisted of benefits received from the Government (Record p. 10).

There can be no question, therefore, but that the entire purchase price of this property, both that which

had already been met and that which was yet to accrue, was being paid out of funds received under the Act here in question uncommingled with any other funds.

The fact that the Fifteen Hundred ($1,500) Dollars mortgage was later paid off from the proceeds of the fire insurance policy, is immaterial because said insurance was collected from certain buildings which were destroyed on said property, and the premiums for said insurance were paid out of the Guardian funds (Record p. 8).

Therefore these funds were also the result of accruals from benefits received under the World War Veterans' Act. However, as above pointed out, this Fifteen Hundred ($1,500) Dollar payment was immaterial to the question here involved because it was made subsequent to the time that this tax lien became fixed.

VI.

Conclusion.

It is therefore, respectfully submitted that it was the intention of Congress, as shown by the history of legislation governing pensions and gratuities, and as recognized by the decisions of the various courts, to absolutely exempt from all taxation these funds, irrespective of the form in which they are held by the guardian, the veteran or the beneficiary, so long as said funds have not been commingled so as to lose their identity.

It is, therefore, respectfully submitted that the decision of the Supreme Court of Tennessee on this question is erroneous and that this case is one calling for the exercise by this Court of its supervisory powers, by granting a Writ of Certiorari and thereafter reviewing and reversing said decision.

RUSSELL R. KRAMER,
Counsel for Petitioner.

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